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NOTICE OF ALLOWANCE AND FEE(S) DUE

7590

11/26/2010

Mathews, Collins, Shepherd & Gould, P.A.
Suite 306
100 Thanet Circle
Princeton, NJ 08540

EXAMINER

MICHALSKI, SEAN M

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 11/26/2010

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/970,015

10/03/2001

Paul Vegliante

2112-342.1 US

2684

TITLE OF INVENTION: FILM CUTTER ASSEMBLY

APPLN. TYPE	SMALL ENTITY	ISSUE FEE DUE	PUBLICATION FEE DUE	PREV. PAID ISSUE FEE	TOTAL FEE(S) DUE	DATE DUE
nonprovisional	NO	\$1510	\$300	\$0	\$1810	02/28/2011

THE APPLICATION IDENTIFIED ABOVE HAS BEEN EXAMINED AND IS ALLOWED FOR ISSUANCE AS A PATENT. PROSECUTION ON THE MERITS IS CLOSED. THIS NOTICE OF ALLOWANCE IS NOT A GRANT OF PATENT RIGHTS. THIS APPLICATION IS SUBJECT TO WITHDRAWAL FROM ISSUE AT THE INITIATIVE OF THE OFFICE OR UPON PETITION BY THE APPLICANT. SEE 37 CFR 1.313 AND MPEP 1308.

THE ISSUE FEE AND PUBLICATION FEE (IF REQUIRED) MUST BE PAID WITHIN THREE MONTHS FROM THE MAILING DATE OF THIS NOTICE OR THIS APPLICATION SHALL BE REGARDED AS ABANDONED. THIS STATUTORY PERIOD CANNOT BE EXTENDED. SEE 35 U.S.C. 151. THE ISSUE FEE DUE INDICATED ABOVE DOES NOT REFLECT A CREDIT FOR ANY PREVIOUSLY PAID ISSUE FEE IN THIS APPLICATION. IF AN ISSUE FEE HAS PREVIOUSLY BEEN PAID IN THIS APPLICATION (AS SHOWN ABOVE), THE RETURN OF PART B OF THIS FORM WILL BE CONSIDERED A REQUEST TO REAPPLY THE PREVIOUSLY PAID ISSUE FEE TOWARD THE ISSUE FEE NOW DUE.

HOW TO REPLY TO THIS NOTICE:

I. Review the SMALL ENTITY status shown above.

If the SMALL ENTITY is shown as YES, verify your current SMALL ENTITY status:

A. If the status is the same, pay the TOTAL FEE(S) DUE shown above.

B. If the status above is to be removed, check box 5b on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and twice the amount of the ISSUE FEE shown above, or

If the SMALL ENTITY is shown as NO:

A. Pay TOTAL FEE(S) DUE shown above, or

B. If applicant claimed SMALL ENTITY status before, or is now claiming SMALL ENTITY status, check box 5a on Part B - Fee(s) Transmittal and pay the PUBLICATION FEE (if required) and 1/2 the ISSUE FEE shown above.

II. PART B - FEE(S) TRANSMITTAL, or its equivalent, must be completed and returned to the United States Patent and Trademark Office (USPTO) with your ISSUE FEE and PUBLICATION FEE (if required). If you are charging the fee(s) to your deposit account, section "4b" of Part B - Fee(s) Transmittal should be completed and an extra copy of the form should be submitted. If an equivalent of Part B is filed, a request to reapply a previously paid issue fee must be clearly made, and delays in processing may occur due to the difficulty in recognizing the paper as an equivalent of Part B.

III. All communications regarding this application must give the application number. Please direct all communications prior to issuance to Mail Stop ISSUE FEE unless advised to the contrary.

IMPORTANT REMINDER: Utility patents issuing on applications filed on or after Dec. 12, 1980 may require payment of maintenance fees. It is patentee's responsibility to ensure timely payment of maintenance fees when due.

PART B - FEE(S) TRANSMITTAL

Complete and send this form, together with applicable fee(s), to: Mail

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INSTRUCTIONS: This form should be used for transmitting the ISSUE FEE and PUBLICATION FEE (if required). Blocks 1 through 5 should be completed where appropriate. All further correspondence including the Patent, advance orders and notification of maintenance fees will be mailed to the current correspondence address as indicated unless corrected below or directed otherwise in Block 1, by (a) specifying a new correspondence address; and/or (b) indicating a separate "FEE ADDRESS" for maintenance fee notifications.

CURRENT CORRESPONDENCE ADDRESS (Note: Use Block 1 for any change of address)

Note: A certificate of mailing can only be used for domestic mailings of the Fee(s) Transmittal. This certificate cannot be used for any other accompanying papers. Each additional paper, such as an assignment or formal drawing, must have its own certificate of mailing or transmission.

7590 11/26/2001

**Mathews, Collins, Shepherd & Gould, P.A.
Suite 306
100 Thanet Circle
Princeton, NJ 08540**

Certificate of Mailing or Transmission

I hereby certify that this Fee(s) Transmittal is being deposited with the United States Postal Service with sufficient postage for first class mail in an envelope addressed to the Mail Stop ISSUE-FEE address above, or being facsimile transmitted to the USPTO (571) 273-2885, on the date indicated below.

(Depositor's name)
(Signature)
(Date)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/970,015	10/03/2001	Paul Vegliante	2112-342.1 US	2684

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nonprovisional	NO	\$1510	\$300	\$0	\$1810	02/28/2011

EXAMINER	ART UNIT	CLASS-SUBCLASS
MICHALSKI, SEAN M	3724	083-614000

1. Change of correspondence address or indication of "Fee Address" (37 CFR 1.363).

☐ Change of correspondence address (or Change of Correspondence Address form PTO/SB/122) attached.

☐ "Fee Address" indication (or "Fee Address" Indication form PTO/SB/147; Rev 03-02 or more recent) attached. Use of a **Customer Number is required.**

2. For printing on the patent front page, list

- (1) the names of up to 3 registered patent attorneys or agents OR, alternatively, 1 _____
- (2) the name of a single firm (having as a member a registered attorney or agent) and the names of up to 2 registered patent attorneys or agents. If no name is listed, no name will be printed. 2 _____
- 3 _____

3. ASSIGNEE NAME AND RESIDENCE DATA TO BE PRINTED ON THE PATENT (print or type)

PLEASE NOTE: Unless an assignee is identified below, no assignee data will appear on the patent. If an assignee is identified below, the document has been filed for recordation as set forth in 37 CFR 3.11. Completion of this form is NOT a substitute for filing an assignment.

(A) NAME OF ASSIGNEE

(B) RESIDENCE: (CITY AND STATE OR COUNTRY)

Please check the appropriate assignee category or categories (will not be printed on the patent): ☐ Individual ☐ Corporation or other private group entity ☐ Government

4a. The following fee(s) are submitted:

- ☐ Issue Fee
- ☐ Publication Fee (No small entity discount permitted)
- ☐ Advance Order - # of Copies _____

4b. Payment of Fee(s): (Please first reapply any previously paid issue fee shown above)

- ☐ A check is enclosed.
- ☐ Payment by credit card. Form PTO-2038 is attached.
- ☐ The Director is hereby authorized to charge the required fee(s), any deficiency, or credit any overpayment, to Deposit Account Number _____ (enclose an extra copy of this form).

5. **Change in Entity Status** (from status indicated above)

☐ a. Applicant claims SMALL ENTITY status. See 37 CFR 1.27.

☐ b. Applicant is no longer claiming SMALL ENTITY status. See 37 CFR 1.27(g)(2).

NOTE: The Issue Fee and Publication Fee (if required) will not be accepted from anyone other than the applicant; a registered attorney or agent; or the assignee or other party in interest as shown by the records of the United States Patent and Trademark Office.

Authorized Signature _____ Date _____

Typed or printed name _____ Registration No. _____

This collection of information is required by 37 CFR 1.311. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, Virginia 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b) (application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 0 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 0 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).

Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

Notice of Allowability**Application No.**

09/970,015

Examiner

SEAN M. MICHALSKI

Applicant(s)

VEGLIANTE ET AL.

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to Appeal Brief of 8/16/2010.
2. ☒ The allowed claim(s) is/are 1,5,13,14,16-19,21,40,42 and 43.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Dianne Dunn-McKay on 11/18/2010.

The application has been amended as follows:

Claim 1 has been amended as follows:

A film cutter apparatus for cutting plastic wrap comprising:

an elongated rail base;

at least ~~one rail~~ two rails formed at a top surface of said elongated rail base and a channel formed within said rail base;

a blade housing ~~for housing~~ including a non-rotationally mounted blade and no wheels, said blade housing bilaterally slidable along said at least ~~(one rail)~~ two rails , a bottom edge of an upper portion of said blade housing protruding on either end from said blade and an end surface being slanted and inclined upwardly and from either end of said bottom edge , said blade is angled from a bottom edge of said blade housing and a lower sliding member to cut in both directions; and

said lower sliding member slidably moving in said channel and a portion of said at least ~~one rail~~ two rails being formed of a first material comprising polyvinyl chloride comprising at least 10% plasticizer which provides cling properties to said plastic wrap received

over said at least one rail ~~for attracting said plastic wrap to said at least one rail and holding said plastic wrap to said at least one rail~~ before, during and after cutting of said plastic wrap[.]; and wherein said first material is selected from the group consisting of, rubber, polyvinyl chloride, ~~said polyvinyl chloride comprising at least 10% plasticizer, silicon elastimer and combinations thereof;~~

wherein said elongated rail base is formed of a second different material of rigid PVC, said first material is coextruded with said second material.

Claim 13 line1 "claim 11" has been changed to read -claim 1—

Claim 18 has been amended as follows:

The apparatus of claim 1 wherein ~~a channel is formed in said elongated rail base below a pair of said at least one rail~~ and further comprising a protrusion extending in said channel at either end of said channel.

Claim 19 has been amended as follows:

The apparatus of claim 18 ~~wherein said blade housing is formed of an upper portion and a lower portion, said upper portion of said blade housing houses said blade, said lower portion of said blade housing slidably moving in said channel;~~ wherein said lower portion of said blade housing snap fits into said protrusion.

Claims 11, 12, 20, 22, 23, 38, 39, 44 have all been canceled.

Claim 21 has been amended as follows:

~~A film cutter apparatus for cutting plastic wrap comprising:~~

~~at least one rail;~~

~~a blade housing for housing a blade, said blade housing bilaterally slidable along said at least one rail, said blade is angled from a bottom edge of said blade;~~

~~a portion of said at least one rail being formed of a first material which provides cling properties to plastic wrap received over said at least one rail for attracting said plastic wrap to~~

~~said at least one rail and holding said plastic wrap to said at least one rail before, during and after cutting of said plastic wrap; and~~

The apparatus of claim 1 comprising

an adhesive layer adhered to said elongated rail base on a surface opposite of said at least one rail[[.]].

~~wherein said first material is selected from the group consisting of rubber, polyvinyl chloride, said polyvinyl chloride comprising at least 10% plasticizer, silicon elastimer and combinations thereof.~~

Claim 40 has been amended as follows:

A method for cutting a plastic wrap comprising:
~~an elongated rail base;~~

providing the film cutter of claim 1;

receiving said plastic wrap over ~~at least one~~ said rails ~~formed at a top surface of an elongated rail base;~~

clinging said plastic wrap to said ~~at least one~~ rails; ~~said at least one rail is formed of a material which provides cling properties to said received plastic wrap for cling of said plastic wrap to said rails;~~

cutting said plastic wrap with ~~a the~~ blade, ~~said blade being housed in a blade housing, said blade housing being bilaterally slidable along said at least one rail wherein said plastic wrap elings to said rails before, during and after cutting of said plastic wrap.~~

Allowable Subject Matter

2. Claims 1, 5, 13, 14, 16-19, 21, 40, 42, and 43 are allowed.
3. The following is an examiner's statement of reasons for allowance: The application includes a number of affidavits and other evidence of secondary considerations which were of some minor weight in evaluating the claimed subject matter. Each claimed feature of the claims is seen or known in the prior art, however it is the unique combination that makes rejection of the combined features untenable.

While Lucas and Wankow disclose substantially all of the claimed features, restricting the housing and blade to a non-wheeled non-rotating blade makes rejection over Lucas difficult if not impossible due to the necessity to destroy the base reference in order to change the style of cutting and associated features. Potentially Capitaio (US 5,758,559) discloses a rail cutter with more of the housing features and discloses that the plastic wrap clings to the single material of the rails, but there is no teaching then to have the substrate be some other divergent material in a more difficult formation process. Capitaio also lacks a specific teaching of the positioning and style of the blade, which would need to be modified. Capitaio does not disclose that the reason for the attraction of film is due to any amount of plasticizer, so the material would need to be modified also. The numerous modifications, though individually simple, begin to cross into the realm of hindsight. A rejection of the detailed combination of the claims in view of Capitaio (and secondary art) would not be tenable. The balance of evidence does not support a prima facie showing that the claims as written are unpatentable, as set forth above.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN M. MICHALSKI whose telephone number is (571)272-6752. The examiner can normally be reached on M-Th 6:30AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sean M Michalski/
Examiner, Art Unit 3724

/Kenneth Peterson/
Primary Examiner, Art Unit 3724